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Attorneys for Defendant Bank of America, N.A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KRISTYN DAWSON, an individual,

Plaintiff,

v.

BANK OF NEW YORK MELLON, a
Delaware corporation; and **BANK OF
AMERICA, N.A.** and its subsidiaries
including aka Bank of America Loan
Servicing, LP, Countrywide Financial
Corporation, and Countrywide Home Loans,
Inc.; **DITECH FINANCIAL, LLC** as
successor by merger to Green Tree
Servicing LLC,

Defendants.

Case No. 3:16-cv-01427-HZ

**DEFENDANT BANK OF AMERICA,
N.A.'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant Bank of America, N.A.¹ ("BANA" or "Defendant"), through its undersigned
counsel, hereby answers the Complaint ("Complaint") of Plaintiff Kristyn Dawson ("Plaintiff").

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¹ Sued erroneously as "Bank of America, N.A. and its subsidiaries including aka Bank of
America Loan Servicing, LP, Countrywide Financial Corporation, and Countrywide Home
Loans, Inc."

Unless expressly admitted herein, BANA lacks sufficient information or knowledge to admit or deny the truth of the allegations of the Complaint and, on that basis, denies the allegations.

JURISDICTION AND VENUE

A. Answering Paragraph A of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

B. Answering Paragraph B of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

FACTS COMMON TO ALL CLAIMS

1.

Answering Paragraph 1 of the Complaint, BANA lacks sufficient information or knowledge to admit or deny the truth of the allegations of this paragraph which are therefore deemed denied.

2.

Answering Paragraph 2 of the Complaint, the allegations in this paragraph are admitted.

3.

Answering Paragraph 3 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

4.

Answering Paragraph 4 of the Complaint, BANA admits that it is a national banking association and is treated as a citizen of North Carolina for diversity purposes. BANA admits that it was the servicer of Plaintiff's loan. The remaining allegations in this paragraph are conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

5.

Answering Paragraph 5 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

6.

Answer Paragraph 6 of the Complaint, to the extent this paragraph references written documents, the contents of the written documents speak for themselves. The remaining allegations in this paragraph are conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

7.

Answering Paragraph 7 of the Complaint this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

8.

Answering Paragraph 8 of the Complaint, BANA lacks sufficient information or knowledge to admit or deny the truth of the allegations of this paragraph which are therefore deemed denied.

9.

Answering Paragraph 9 of the Complaint, to the extent this paragraph references written documents, the contents of the written documents speak for themselves. BANA lacks sufficient information to admit or deny the truth of the remaining allegations in this paragraph, which are therefore deemed denied.

10.

Answering Paragraph 10 of the Complaint, BANA admits that Plaintiff was declined for both a refinance and a loan modification. BANA denies the remaining allegations in this paragraph.

11.

Answering Paragraph 11 of the Complaint, BANA admits that Plaintiff's interest rate reset higher and Plaintiff fell behind on her payments. BANA denies the remaining allegations in this paragraph.

12.

Answering Paragraph 12 of the Complaint, BANA admits that a foreclosure notice was sent to Plaintiff at the end of 2010, but is without sufficient information or knowledge to admit or deny the truth of the remaining allegations of this paragraph, which are therefore deemed denied.

13.

Answering Paragraph 13 of the Complaint, BANA is without sufficient information or knowledge to admit or deny the truth of the remaining allegations of this paragraph, which are therefore deemed denied.

14.

Answering Paragraph 14 of the Complaint, BANA admits that Plaintiff fell behind on her loan payments in 2011 and a notice of foreclosure was sent out in August 2011. BANA is without sufficient information or knowledge to admit or deny the truth of the remaining allegations of this paragraph, which are therefore deemed denied.

15.

Answering Paragraph 15 of the Complaint, BANA admits that plaintiff filed for bankruptcy.

16.

Answering Paragraph 16 of the Complaint, BANA admits the allegations in this paragraph.

17.

Answering Paragraph 17 of the Complaint, this paragraph references written documents; the contents of the written documents speak for themselves.

18.

Answering Paragraph 18 of the Complaint, BANA admits that Plaintiff was denied for a loan modification, appealed the denial and that appeal was subsequently denied on or around November 30, 2013. BANA admits that Plaintiff's loan modification application was denied because she failed the NPV test. The remaining allegations in this paragraph are denied.

19.

Answering Paragraph 19 of the Complaint, this paragraph references written documents; the contents of the written documents speak for themselves.

20.

Answering Paragraph 20 of the Complaint, BANA is without sufficient information or knowledge to admit or deny the truth of the allegations of this paragraph which are therefore deemed denied.

21.

Answering Paragraph 21 of the Complaint, BANA admits that Green Tree Servicing LLC took over servicing of Plaintiff's loan September 15, 2014.

22.

Answering Paragraph 22 of the Complaint, BANA is without sufficient information or knowledge to admit or deny the truth of the allegations of this paragraph which are therefore deemed denied.

23.

Answering Paragraph 23 of the Complaint, BANA is without sufficient information or knowledge to admit or deny the truth of the allegations of this paragraph which are therefore deemed denied.

24.

Answering Paragraph 24 of the Complaint, this paragraph references written documents; the contents of the written documents speak for themselves.

25.

Answering Paragraph 25 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

26.

Answering Paragraph 26 of the Complaint, BANA incorporates its responses to the preceding paragraphs as though set forth in full herein.

27.

Answering Paragraph 27 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

28.

Answering Paragraph 28 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

SECOND CLAIM FOR RELIEF

(Intentional Interference with Economic Relationship)

29.

Answering Paragraph 29 of the Complaint, BANA incorporates its responses to the preceding paragraphs as though set forth in full herein.

30.

Answering Paragraph 30 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

31.

Answering Paragraph 31 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

32.

Answering Paragraph 32 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

33.

Answering Paragraph 33 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

34.

Answering Paragraph 34 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

35.

Answering Paragraph 35 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

36.

Answering Paragraph 36 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

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37.

Answering Paragraph 37 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

38.

Answering Paragraph 38 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

THIRD CLAIM FOR RELIEF

(Violation of the Oregon Unfair Trade Practices Act)

39.

Answering Paragraph 39 of the Complaint, BANA incorporates its responses to the preceding paragraphs as though set forth in full herein.

40.

Answering Paragraph 40 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

41.

Answering Paragraph 41 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

42.

Answering Paragraph 42 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

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43.

Answering Paragraph 43 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

44.

Answering Paragraph 44 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

45.

Answering Paragraph 45 of the Complaint, this paragraph contains conclusions of law, to which no response is required. To the extent that a response is required, BANA denies the allegations in this paragraph.

PRAYER FOR RELIEF

BANA denies that Plaintiff is entitled to the relief claimed.

AFFIRMATIVE DEFENSES

BANA hereby alleges the following separate and distinct defenses and affirmative defenses without conceding that BANA necessarily bears the burden of proof or persuasion:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

46.

The Complaint, and each claim therein, fails to set forth facts sufficient to state a claim against BANA.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

47.

Plaintiff's claims are barred by the equitable doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

(Laches)

48.

Plaintiff's claims are barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Mitigation)

49.

Plaintiff's claims are barred, in whole or in part, by the failure to exercise reasonable care to mitigate their alleged damages, if any.

FIFTH AFFIRMATIVE DEFENSE

(Contribution)

50.

Without admitting any of the allegations in the Complaint, BANA alleges that the injuries and/or damages alleged by Plaintiff were proximately caused by, occurred, and/or were contributed to by Plaintiff's own acts or failures to act.

SIXTH AFFIRMATIVE DEFENSE

(Consent/Acquiescence/Ratification)

51.

Plaintiff acquiesced in, consented to and/or ratified the acts and omissions alleged in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Consistent with Law and Applicable Regulations)

52.

The Complaint and each claim set forth therein is barred because BANA's conduct was consistent with all applicable laws and regulations.

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EIGHTH AFFIRMATIVE DEFENSE

(Mistake)

53.

Any alleged acts or omissions of BANA that give rise to Plaintiff's claims are the result of innocent mistake.

NINTH AFFIRMATIVE DEFENSE

(Good Faith)

54.

Plaintiff's claims are barred because BANA's conduct was at all times undertaken in good faith.

TENTH AFFIRMATIVE DEFENSE

(Assumption of the Risk)

55.

Plaintiff's claims are barred by the doctrine of assumption of the risk.

ELEVENTH AFFIRMATIVE DEFENSE

(No Damages)

56.

Plaintiff suffered no actual damages or speculative damages and is not entitled to recovery from BANA.

TWELFTH AFFIRMATIVE DEFENSE

(Barred by Contract)

57.

Plaintiff's claims are barred by the applicable provisions of the loan documents.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Merger)

58.

Plaintiff's claims are barred to the extent that any rights upon which Plaintiff relies have been merged into the deed of conveyance for the property at issue.

FOURTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

59.

Plaintiff's claims are barred to the extent that they have been brought outside the period prescribed by the applicable statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

(Third Party Conduct)

60.

Plaintiff's claims are barred because the acts of which Plaintiff complains were performed by third parties for whose conduct BANA is not legally responsible.

SIXTEENTH AFFIRMATIVE DEFENSE

(Causation)

61.

Any loss, damage or injury sustained by Plaintiff was not proximately caused by any actions of BANA.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

62.

To the extent not set forth herein, BANA reserves the right to assert additional defenses that become available or apparent during discovery and to amend its Answer accordingly.

WHEREFORE, BANA prays:

1. That Plaintiff takes nothing by way of the Complaint;
2. That judgment be entered in favor of BANA and against Plaintiff;
3. That BANA be awarded its attorney's fees; and
4. That BANA be granted such other relief as the Court deems just and proper.

DATED: February 28, 2017.

KILMER VOORHEES & LAURICK, P.C.

/s/ James P. Laurick

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Of Attorneys for Defendant Bank of America, N.A.

CERTIFICATE OF SERVICE

I certify that on this 28th day of February, 2017, the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S ANSWER TO PLAINTIFF'S COMPLAINT** will be served in accordance with the Court's CM/ECF system which will send notification of such filing by notice via email to the ECF participants of record a true copy of the foregoing document.

KILMER VOORHEES & LAURICK, P.C.

/s/ James P. Laurick

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